

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8475 of 1989

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

KHUSHALBHAI B PATEL

Versus

KEKOBAD MANEKSHAW PATEL, SINCEDECEASED THROUGH HEIRS & L.R.

Appearance:

MR JITENDRA M PATEL for Petitioner
RULE SERVED for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

Date of decision: 16/02/2001

ORAL JUDGEMENT

1. This petition is under Article 227 of the Constitution of India with a prayer to quash by issuing a writ of certiorari the impugned order dated 23.6.89 of the Gujarat Revenue Tribunal, whereby the order of the

Mamlatdar cum A.L.T., Hansot dated 28.7.1977 declaring the petitioner as tenant with right to purchase from the respondent landlord, land bearing survey no. 78/3 admeasuring 1 acre 12 gunthas of village Ilav, District Bharuch, has been set aside.

2. The case of the petitioner before the Mamlatdar was that he is in cultivating possession of the land under tenancy rights since the year 1961. It is also stated that before the Mamlatdar, the land lord entered the witness box and admitted the fact of creating tenancy rights in favour of the petitioner. On the above admission, the Mamlatdar declared the petitioner as tenant of the land in question and thereupon proceedings commenced for fixation of purchase price.

3. After a period of seven years, the respondent land lord preferred an appeal to the Assistant collector, Bharuch who by his order dated 10-2-1985 dismissed the same on the ground of bar of limitation and also on merits.

4. The respondent landlord then approached the Gujarat Revenue Tribunal (for short the GRT) by invoking its revisional jurisdiction under Section 76 of the Bombay Tenancy and Agricultural Lands Act, 1948. The G.R.T. set aside the order of the Mamlatdar on totally a new ground that the tenancy in relation to the land in question and its proposed sale is violative of the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (for short, the Act of 1947). It has been held by the Tribunal that as there has been a breach of the provisions of the Act of 1947, the petitioner could not be held to be lawful tenant to claim declaration of his status as such and claim right of purchase.

5. Learned counsel appearing for the petitioner in assailing the order of the Tribunal raised several grounds inter alia that for the first time a new ground has been allowed to be urged by taking fresh evidence contrary to the procedure contained in Regulation 22 of the Bombay Revenue Tribunal Regulations 1958 and question of law and fact was allowed to be urged and taken into consideration for upsetting the judgment of the Mamlatdar. Alternatively it is submitted that if in the opinion of the Tribunal there was a ground for investigating into the question of contravention of the provisions of the Act of 1947, the matter ought to have been remanded to the Mamlatdar to afford opportunities to the parties to lead necessary evidence on the said issue.

6. Learned counsel appearing for the respondent land lord took me through certain portions of the order of the Assistant Collector and the Tribunal to support the order of the Tribunal. He has however realised the fact that on a new ground, for the first time raised, may be, one of law relating to the contravention of the provisions of the Act of 1947, no enquiry was held by the Tribunal. The ground based on the said Act was discovered only when the final order came to be passed by the Tribunal. The learned counsel appearing for the petitioner therefore is right in raising the grievance that the petitioner had absolutely no opportunity to satisfy the revenue authorities that the tenancy rights created and the right of purchase claimed would not in any manner violate any of the provisions of the Act of 1947.

7. For the reasons aforesaid, this petition partly succeeds. The impugned order of the G.R.T. dated 23-6-1989, Annexure H is hereby quashed. The case, is remanded to Mamlatdar and A.L.T. for grant of opportunity to both the parties to lead necessary evidence on the question of alleged contravention of the provisions of the Act of 1947.

8. Since the case is very old and the petitioner claims to be in continuous possession of the land in question and there is a status quo order in operation during pendency of this petition, I direct the parties to appear before Mamlatdar, Hansot on 28-3-2001, so that he may fix up the hearing for further proceedings and after recording evidence decide the case finally within a reasonable period. Rule is made absolute to the aforesaid extent.

In the circumstances, I leave the parties to bear their own costs.

(D.M. DHARMADHIKARI, C.J.)

[sndevu]